

CHAPTER 57-38.6

AGRICULTURAL BUSINESS INVESTMENT TAX CREDIT

57-38.6-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural commodity processing facility" means a facility that through processing involving the employment of knowledge and labor adds value to an agricultural commodity capable of being raised in this state.
2. "Director" means the director of the department of commerce division of economic development and finance.
3. "Qualified business" means a cooperative, corporation, partnership, or limited liability company that:
 - a. Is incorporated or organized in this state after December 31, 2000, for the primary purpose of processing and marketing agricultural commodities capable of being raised in this state;
 - b. Has been certified by the securities commissioner to be in compliance under the securities laws of this state;
 - c. Has an agricultural commodity processing facility, or intends to locate one, in this state; and
 - d. Is among the first ten businesses that meets the requirements of this subsection, but not a business that was previously certified as a qualified business under chapter 57-38.5.
4. "Taxpayer" means an individual, estate, trust, corporation, partnership, or limited liability company.

57-38.6-02. Certification - Investment reporting by qualified businesses. The director shall certify whether a business that has requested to become a qualified business meets the requirements of subsection 3 of section 57-38.6-01. The director shall establish the necessary forms and procedures for certifying qualified businesses. The director is not required to recertify a business as a qualified business under this chapter if the business was previously certified by the director as a qualified business under chapter 57-38.5.

57-38.6-03. Agricultural business investment tax credit. If a taxpayer makes a qualified investment in a qualified business, the taxpayer is entitled to a credit against state income tax liability as determined under section 57-38-29, 57-38-30, or 57-38-30.3. The amount of the credit to which a taxpayer is entitled is thirty percent of the amount invested by the taxpayer in qualified businesses during the taxable year, subject to the following:

1. The maximum annual credit a taxpayer may obtain under this section is fifty thousand dollars and no taxpayer may obtain more than two hundred fifty thousand dollars in credits under this section over any combination of taxable years. This subsection may not be interpreted to limit additional investment by a taxpayer for which that taxpayer is not applying for a credit.
2. In any taxable year, a taxpayer may claim no more than fifty percent of the credit under this section which is attributable to qualified investments in a single taxable year. The amount of the credit allowed under this section for any taxable year may not exceed fifty percent of the taxpayer's tax liability as otherwise determined under chapter 57-38.

3. Any amount of credit under this section not allowed because of the limitations in this section may be carried forward for up to five taxable years after the taxable year in which the investment was made.
4. A partnership, subchapter S corporation, limited liability company that for tax purposes is treated like a partnership, or any other passthrough entity that invests in a qualified business must be considered to be the taxpayer for purposes of the investment limitations in this section and, except for the tax liability limitation under subsection 2, the amount of the credit allowed with respect to the passthrough entity's investment in a qualified business must be determined at the passthrough entity level. The amount of the total credit determined at the passthrough entity level must be allowed to the passthrough entity's owners, in proportion to their respective ownership interests in the passthrough entity.
5. The investment must be at risk in the business. A qualified investment must be in the form of a purchase of ownership interests or the right to receive payment of dividends from the business. An investment for which a credit is received under this section must remain in the business for at least three years. An investment placed in escrow does not qualify for the credit.
6. The entire amount of an investment for which a credit is claimed under this section must be expended by the qualified business for plant, equipment, research and development, marketing and sales activity, or working capital for the qualified business.
7. The tax commissioner may disallow any credit otherwise allowed under this section if any representation by a business in the application for certification as a qualified business proves to be false or if the taxpayer or qualified business fails to satisfy any conditions under this section or any conditions consistent with this section otherwise determined by the tax commissioner. The amount of any credit disallowed by the tax commissioner that reduced the taxpayer's income tax liability for any or all applicable tax years, plus penalty and interest provided under section 57-38-45, must be paid by the taxpayer.

57-38.6-04. Taxable year for agricultural business investment tax credit. The tax credit under section 57-38.6-03 accrues to the taxpayer for the taxable year in which the investment in the qualified business was received by the qualified business.

57-38.6-05. Agricultural business investment tax credit - Procedure - Rules. To receive the tax credit provided by section 57-38.6-03, a taxpayer must claim the credit on the taxpayer's annual state income tax return in the manner prescribed by the tax commissioner and file with the return a copy of the form issued by the qualified business as to the taxpayer's investment in the qualified business under section 57-38.6-06.

57-38.6-06. Investment reporting forms. Within thirty days after the date on which an investment in a qualified business is purchased, the qualified business shall file with the tax commissioner and the director and provide to the investor completed forms prescribed by the tax commissioner which show as to each investment in the qualified business the following:

1. The name, address, and social security number of the taxpayer who made the investment.
2. The dollar amount paid for the investment by the taxpayer.
3. The date on which full consideration was received by the qualified business for the investment.

57-38.6-07. Rules and administration. The tax commissioner is charged with administration of this chapter as it relates to an income tax credit and has the same powers for

purposes of this chapter as provided under section 57-38-56. The director is charged with administration of this chapter as it relates to certification of qualified businesses and the director may adopt rules for that purpose.